



SAN FRANCISCO DISTRICT

PUBLIC NOTICE

Regulatory Branch
333 Market Street
San Francisco, CA 94105-2197

NUMBER: **28695N** DATE: **December 7, 2004**
RESPONSE REQUIRED BY: **January 7, 2005**

PERMIT MANAGER: Mark D'Avignon

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1. INTRODUCTION: The California Department of Fish and Game, Region 3, 7329 Silverado Trail, Napa, California 94599 [contact: Mr. Robert Floerke, (707) 944-5500], has applied for a Department of the Army permit to place fill material and conduct work within Corps jurisdiction in association with the **Napa-Sonoma Marshes State Wildlife Area, Napa River Unit, Salt Marsh Ponds 1, 1A, 2, 3, 4, 5, and All American Canal Restoration Project** located in Napa and Sonoma Counties, California (See Sheets 1 and 2). This proposed project is part of the larger Napa River Salt Marsh Restoration Project, which encompasses 10,000 acres including twelve former salt ponds that are owned and managed as a wildlife area by the California Department of Fish and Game. The proposed project area includes six ponds and associated slough channels. Jurisdictional wetlands and other waters of the U.S. within the proposed project boundary shown on Sheet 3 total approximately 6,193 acres. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. 403).

2. PROJECT DESCRIPTION:

The proposed project consists of three primary components, including: repair and maintenance of existing facilities, habitat restoration, and salinity reduction.

Repair and Maintenance of Existing Facilities Component: In and around ponds 1, 1A, 2 and the All American Canal, the proposed work includes levee and road maintenance, parking lot resurfacing for public access, replacement of existing water control structure repairs and installation of new water control structures (See Sheets 4, 5 and 6) for improved water quality and wildlife habitat (referred to as "Phase 1"). In Ponds 1, 1A, and 2, and the All-American Canal restoration would consist of upgrading the ponds to function as high quality pond habitat.

Salinity Reduction/Habitat Restoration Component: The proposed salinity reduction and restoration activities in ponds 3, 4 and 5 are referred to as "Phase 2." Salinity reduction in Ponds 4 and 5 is required before habitat restoration can be accomplished. Pond 3 does not require salinity reduction. In Ponds 3, 4 and 5, restoration would consist of restoring tidal exchange and constructing starter channels and berms in some of the ponds so that tidal marsh habitat is obtained. Proposed design features include levee breaches, levee lowering, and construction of ditch blocks, pilot channels, berms, and channel connectors. Sheets 7 through 10 show typical details of these proposed features.

Purpose and Need: The primary purpose of the project is to restore a mosaic of habitats, including tidal marsh, mudflat, salt panne, and open water habitats (managed ponds). These habitats would to support populations of fish and wildlife, special-

status species, migratory waterfowl, shorebirds, and anadromous and resident fishes. Historical losses of marsh ecosystems around the San Francisco Bay have resulted in only approximately 10% of the original marshes remaining. Several animal and plant species, native to California, including the salt marsh harvest mouse (*Reithrodontomys raviventris*) and the California Clapper Rail (*Rallus longirostris obsoletus*), have been listed as endangered on State and Federal lists due to severe reduction of wetland habitats around the bay. Public acquisition of these former salt ponds provides an opportunity to restore tidal salt marsh and associated habitats on a relatively large scale within the San Francisco Bay system.

Impact: The total estimated volume of material to be excavated during project implementation would be 821,400 cubic yards, with a total excavation footprint of around 112.75 acres. The majority of the excavation footprint would be from existing levees that are not jurisdictional wetlands. Of the total volume of excavated material, approximately 730,800 cubic yards would be placed back into a total of 77.6 acres of jurisdictional wetlands and waters. (Note: The vast majority of the excavated material would be placed into existing borrow-ditches that would eventually revert to wetlands, hence the long-term effects of the proposed fill discharge are expected to be beneficial.) In addition, there could be a potential indirect impact to waters of the U.S. resulting from scour of existing outboard marshes along South Slough, China Slough, Devil's Slough, Dutchman's Slough and the Napa River total approximately 240 acres.

Proposed Mitigation: Due to the future development of marsh habitats within Ponds 3, 4, and 5 resulting from the proposed activities and continued use of Ponds 1, 1A, and 2 as managed ponds for wildlife, there would be no mitigation measures required with the exception of measures taken to minimize or avoid disturbance to sensitive

habitat areas. A total of around 2,900 acres of marsh habitats are anticipated to develop within the ponds, once tidal action is restored. Intertidal mudflat would comprise the majority of pond interiors up to Year 10, with vegetated middle marsh developing as a dominant habitat thereafter. Evolution of Pond 3 to tidal marsh would require 20 to 30 years, Pond 4 is expected to become tidal marsh within approximately 40 years, and habitat evolution in Pond 5 would be somewhat slower than Pond 4, because it is further removed from the sediment supply.

3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act of 1969 (NEPA): In accordance with CEQA and the National Environmental Policy Act (NEPA) an Environmental Impact Report (EIR) and Environmental Impact Statement (EIS) were prepared and released for review and comments.

The EIR for the entire 9,640-acre Napa River Salt Marsh Restoration Project was certified by the California Department of Fish and Game (DFG) on May 3, 2004. On May 7, 2004 the DFG adopted a Notice of Determination (SCH# 1998072074). The Corps of Engineers is currently reviewing the Final EIS and Feasibility Report; the Record of Decision is anticipated to be finalized by the end of 2004.

The EIS and EIR focus on key issues, including hydrology, water quality, biological resources, and geology and soils. Other resource topics such as air quality, hazardous materials, noise, land use, recreation, and cultural resources were also addressed. Four habitat restoration options were evaluated in the EIR and EIS in addition to evaluation of the no-project alternative. The EIR/EIS is available for review at the following website address: <http://www.napa-sonoma-marsh.org/index.html>

Endangered Species Act of 1973 and Magnuson-Stevens Fisheries Conservation and Management Act:

Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any federally listed threatened or endangered species or its designated critical habitat.

Federally listed species are known from the project vicinity, including the salt marsh harvest mouse (*Reithrodontomys raviventris*) and the California Clapper Rail (*Rallus longirostris obsoletus*), Western Snowy Plover (*Charadrius alexandrinus nivosus*), and delta smelt (*Hypomesus transpacificus*). Protocol-level surveys conducted by the U.S. Geological Survey for the California Clapper Rail during Spring 2004 failed to locate this species within the study area.

A Biological Assessment for the project was compiled in December 2002. The FWS issued a Biological Opinion (1-1-03-F-0044) which concluded that the project was consistent with special-status species recovery objectives, was not likely to jeopardize the continued existence of listed species found within the area, and would not destroy or adversely modify any critical habitat. The opinion included an Incidental Take Statement for the California Clapper Rail, salt marsh harvest mouse, western snowy plover, delta smelt, and Sacramento splittail.

NMFS and several interagency fisheries councils have designated specific water bodies as Essential Fish Habitat (EFH) in accordance with the Magnuson-Stevens Fisheries Conservation and Management Act. The NMFS reviewed the Biological Assessment for the proposed project and issued a Letter of Concurrence (LOC; 151422SWR02SR6288; MEM) for the project on June 30, 2003 concluding that the Napa River Salt

Marsh Restoration Project was not likely to adversely affect endangered and threatened salmonid species or designated critical habitat, and that Essential Fish Habitat Conservation Recommendations are not necessary.

Clean Water Act of 1972 (CWA):

a. Water Quality: Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. The applicant has provided the Corps with evidence that he has submitted a valid request for State water quality certification to the Oakland RWQCB. No Corps permit will be granted until the applicant obtains the required water quality certification.

A Section 401 Water Quality Certification and Waste Discharge Requirements from the California Regional Water Quality Control Board, San Francisco Bay Region have already been received (Order No. r02-2004-63), for discharges of fill material into waters of the U.S./State associated with all of the lower ponds (Ponds 1 through 6A).

Those parties concerned with any water quality issues that may be associated with this project should write to the Executive Officer, California Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, California 94612; by the close of the comment period of this Public Notice.

b. Alternatives: Evaluation of the Project's impacts includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). The applicant has submitted an Analysis of Alternatives that is available for review at the Corps' office in San Francisco. For the

Project, the basic project purpose is to maintain pond habitats, and to enhance and create tidal marsh habitats using methods and approaches with a high potential for success. Therefore, the basic purpose is water dependent; implementation of restoration efforts does require access or proximity to or siting within a special aquatic site.

Improved Water Controls and Infrastructure Component: After considering the goals and objectives of this part of the project, and site constraints and opportunities, it was concluded that the work related to levee repair, replacement of water control structures, and levee breaches, can only be done in the location of the existing facilities in and around ponds 1, 1A, 2 and the All American Canal.

Salinity Reduction Component: For the Napa River Salt Marsh Restoration Project Phase 2 work, the process was to identify and analyze different salinity reduction and habitat restoration options for the entire twelve-pond complex. After considering the goals and objectives of the project and site constraints and opportunities, a wide range of salinity reduction and habitat restoration options were identified and evaluated at an initial screening level. From the options that were identified as viable in the first round of screening, salinity reduction measures were combined into four salinity reduction options and habitat restoration measures were combined into four habitat restoration options. Preliminary screening of these salinity reduction options was achieved by conducting initial hydrologic modeling runs to determine the feasibility of various approaches. The initial set of habitat restoration options were screened by characterizing the evolution of the site over time with varying assumptions. After consideration of the no action plan and project alternatives a single, Recommended Plan or Environmentally Superior Alternative was chosen based on extensive analysis. The environmentally superior alternative would

result in the least damage to the biological and physical environment, and protects, preserves, and enhances the historical, cultural and natural resources of the project area. This alternative results in relatively quick salinity reduction of the lower ponds reducing the potential for adverse effect to aquatic resources. The environmentally superior alternative included tidal restoration at Ponds 3, 4 and 5.

Habitat Restoration Component: As part of the Corps Feasibility Study and preparation of the EIR/EIS extensive modeling of the project area as part of the hydrodynamic and geomorphologic analysis was conducted. These studies also described and evaluated specific elements of the restoration design for Ponds 3, 4, and 5. The restoration design was developed in close coordination with the project sponsors. The design process also benefited from input from the Napa Sonoma Marsh Restoration Group (NSMRG) and the Restoration Technical Advisory Group (RTAG). The current design was determined to be that which would result in the development of the target habitats with the least disturbance to existing biotic resources, in a reasonable timeline.

Coastal Zone Management Act of 1972 (CZMA): Section 307 of the Coastal Zone Management Act requires the applicant to certify that the proposed project will comply with the State's Coastal Zone Management Program, if applicable. No Corps permit will be issued until the State had concurred with the applicant's certification. Concurrent with this application, materials have been forwarded to the San Francisco Bay Conservation and Development Commission (BCDC). Questions related to that application should be forwarded to BCDC, 50 California Street, Suite 2600, San Francisco, California 94111.

National Historic Preservation Act of 1966 (NHPA): The EIR/EIS for the entire Napa River Salt Marsh Restoration Project addressed potential impacts of all of the sets of options to cultural resources. Mitigation measures were outlined for those impacts that would result in an adverse effect to cultural resources.

4. PUBLIC INTEREST EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

5. CONSIDERATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the

preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

6. SUBMISSION OF COMMENTS: Interested parties may submit in writing any comments concerning this project. Comments should include the applicant's name, the project number and the date of this Public Notice and should be forwarded so as to reach this office within the comment period specified on Page 1 of this Public Notice. Comments should be sent to the Regulatory Branch at the address shown on the title page. It is Corps policy to forward any such comments, which include objections, to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose address is indicated in the first paragraph of this notice, or by contacting Mark D'Avignon of our office at telephone 415-977-8507. Details on any changes of a minor nature that are made in the final permit action will be provided on request.